

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION

Michele Gasque Thornley	)	
o/b/o Alexis B. and Ashley E.	)	C/A No. 9:10-2589-TMC
Whittemore,	)	
	)	
	)	<b><u>ORDER</u></b>
Plaintiff,	)	
	)	
v.	)	
	)	
Michael J. Astrue, Commissioner	)	
of Social Security Administration,	)	
	)	
Defendant.	)	
	)	

Plaintiff, proceeding pro se, filed this action pursuant to 42 U.S.C. § 405(g), seeking judicial review of the Commissioner's final decision denying benefits to Alexis B. Whittemore and Ashley E. Whittemore. Defendant filed a Motion to Dismiss contending the complaint was untimely filed. (Dkt. # 19).

This matter is before the Court after the issuance of a Report and Recommendation ("R&R") of United States Magistrate Judge Bristow Marchant filed May 20, 2011. (Dkt. # 24).<sup>1</sup> In the R&R, the Magistrate Judge recommends that Defendant's Motion to Dismiss (Dkt. # 19) be denied. The Magistrate Judge provided the parties a notice setting forth the deadline for filing objections and the consequences for failing to submit timely objections. (Dkt. # 24 at 4). On June 6, 2011, Defendant filed objections to the R&R. (Dkt. # 26).

In reviewing the R&R, the Court applies the following standard:

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<sup>1</sup>In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to a United States Magistrate Judge for pretrial handling.

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections. . . The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

*Wallace v. Housing Auth. of the City of Columbia*, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted). This court need not conduct a de novo review when a party “makes general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir.1982). In light of these standards, the Court has reviewed, de novo, the R&R and the objections.

After a thorough review of the R&R and the record in this case, the Court adopts the Magistrate Judge’s R&R and incorporates it herein. For the reasons stated therein, it is therefore **ORDERED** that Defendant’s Motion to Dismiss (Dkt. # 19) is **DENIED**.

IT IS SO ORDERED.

s/Timothy M. Cain  
United States District Judge

October 26, 2011  
Greenville, South Carolina

**NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.